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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Complete Detariffing for Competitive	)	CC Docket No. 97-146
Access Providers and Competitive	)	
Local Exchange Carriers	)	

REPLY COMMENTS OF ALLEGIANCE TELECOM, INC.

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SUMMARY

The Commission should not require competitive local exchange carriers to detariff interstate access services. Commenters convincingly demonstrate that mandatory detariffing would impose undue burdens on the CLEC industry and would confer unnecessary advantages on large carriers who already have superior bargaining power.

A mandatory detariffing regime would force CLECs to incur the time and expense to negotiate hundreds of access contracts with interexchange carriers and thereby create unwarranted barriers to entry. Further, IXCs themselves assert that detariffing is unnecessary because its costs far outweigh any purported benefits. Mandatory detariffing would facilitate the ability of large IXCs to use their market power to coerce CLECs to accept uneconomic terms.

The Commission should reject AT&T's proposal to selectively detariff those CLECs' rates to which it objects. Instead, the Commission should enforce its existing rules to ensure that CLECs' rates, terms and charges for interstate access services are not unjust or unreasonable.

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REPLY COMMENTS OF ALLEGIANCE TELECOM, INC.

Allegiance Telecom, Inc. ("Allegiance") hereby submits its reply comments concerning whether the Commission should require competitive local exchange carriers ("CLECs") to detariff interstate access services.[1] Comments show that mandatory detariffing and negotiation is not a feasible approach for setting CLEC interstate access charges because it would impose unacceptable and unnecessary burdens on CLECs and further advantage large carriers who already possess superior bargaining power. AT&T's proposal to selectively prohibit CLECs whose rates it objects to from filing access tariffs underscores the competitive harms that mandatory detariffing would engender - *i.e.*, large IXCs would refuse to negotiate access agreements with smaller CLECs and would disavow any obligation to pay for access service in the absence of an agreement. The Commission should not require mandatory detariffing for CLEC interstate access charges.

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[1] *Commission Asks Parties to Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services*, Public Notice, CC Docket Nos. 96-262 and 97-146, DA 00-1268, (*rel.* June 16, 2000) ("*Public Notice*").

I. MANDATORY DETARIFFING WOULD IMPOSE UNACCEPTABLE BURDENS ON CLECS

In their initial comments, Allegiance and others demonstrate that mandatory detariffing would be unduly burdensome because it would force CLECs to incur the time and expense of individually negotiating access contracts with hundreds of IXCs.[2] While advocating selective mandatory detariffing, AT&T acknowledges that mandatory detariffing would impose significant and unwarranted burdens both on IXC access customers and CLECs to negotiate mutually satisfactory contractual access arrangements, even where the CLECs' tariffed rates were otherwise acceptable to the IXCs.[3]

Other commenters also show that negotiating access charges would impose additional unacceptable burdens on CLECs in terms of transaction costs, personnel, time and legal expenses.[4] If CLECs were unable to reach agreement with certain IXCs that were using their access services, the CLECs would be required to expend considerable time and resources litigating their right to obtain payment for access services received by the IXCs.[5] In addition,

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[2] *See, e.g.*, Allegiance Comments at 4-5; ALTS Comments at 5; Joint Comments of CTSI, RCN and Telergy ("Joint Comments of CTSI et al.") at 5; Joint Comments of e.spire Communications, Fairpoint Communications Solutions Corp., Intermedia Communications Inc., Newsouth Communications, Nextlink Communications Inc. and Talk.Com, Inc. ("Joint Comments of e.spire et al.") at 10; Time Warner Telecom Comments at 10.

[3] AT&T Supplemental Comments at 8.

[4] Joint Comments of e.spire et al. at 10.

[5] ALTS Comments at 9. *See, also*, AT&T Reply Comments in CC Docket 97-146, at 6-7, filed Sept. 17, 1997.

even if the Commission were to establish a transition to detariffing to permit carriers to come to agreement on the rates, terms and conditions of access service (similar to the nine-month transition to domestic, interstate, interexchange service detariffing), the time afforded to negotiate numerous contracts would not in any way diminish the burdens of doing so. Longer term, the burdens of negotiating numerous contracts would effectively establish a barrier to entry for carriers that seek to enter the market after the transition period.[6]

The few commenters that support mandatory detariffing have essentially ignored the difficulties that would be faced by CLECs forced to negotiate access arrangements with hundreds of IXCs. Thus, WorldCom provides little more than generalized, unsupported allegations that detariffing might constitute a suitable marketplace approach to setting CLEC interstate access charges without addressing how negotiations could feasibly be used to set rates in light of all the defects of this approach cited by CLECs. Similarly, Ad Hoc Telecommunication Users Committee simply ignores the myriad reasons why detariffing would be an impossible approach without providing anything other than banalities in favor of it.[7]

It is also worth noting that apart from the harm to CLECs, there is no evidence in the record that mandatory detariffing will provide IXCs with any appreciable or necessary benefits. AT&T states that IXCs do not need the protection of mandatory detariffing. "Unlike in the

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[6] Time Warner Telecom Comments at 10.

[7] Ad Hoc Telecommunications Users Committee Comments at 3-4.

Commission's recent consideration of mandatory detariffing of [long distance] services, there is no 'consumer interest' basis here to impose detariffing on all CLEC access services."[8] AT&T also states that "the customers of switched access services–the IXCs–have substantial experience operating in a tariffed environment, and have both the knowledge and means necessary to protect their interests when operating in a permissive regime."[9]

Accordingly, the Commission should not adopt mandatory detariffing because it would impose unacceptable burdens on CLECs without commensurate benefit.

II. MANDATORY DETARIFFING WOULD BENEFIT LARGE CARRIERS

The record also shows that detariffing and negotiation is not a suitable marketplace approach to setting CLEC interstate access charges because IXCs have superior bargaining power. As explained by Allegiance and others in initial comments, forcing CLECs to negotiate access charges with IXCs would be appropriate only if the parties are of roughly equal bargaining power.[10] The record shows that this is not the case.

Sprint, the third-largest IXC, states that reliance on bilateral negotiations could have adverse public policy consequences and introduce distortion into telecommunications markets because such a process tends to favor the large IXCs and the large LECs over their smaller

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[8] AT&T Supplemental Comments at 8.

[9] AT&T Reply Comments in CC Docket No. 97-146, filed Sept. 17, 1997, at 9.

[10] Allegiance Comments at 5-7; GSA Comments at 5; Joint Commets of CTSI et al. at 8; Joint Comments of Mpower, ITC^Delta, Inc., and Broadstreet ("Joint Comments of Mpower et al.") at 7, 10.

competitors.[11] The larger the IXC, Sprint states, the more a given CLEC would need to be able to complete calls to that IXC's customers in order to compete with the incumbent LEC and, consequently, the more that IXC could bring pressure on the CLEC to obtain lower access charges.[12] A large IXC not only could afford to walk away from the negotiating table, but also would have incentives to do so. Indeed, the more devastating the effect on a CLEC, the more dramatic a lesson it will provide to other CLECs to accept the IXC's terms, perversely increasing the IXC's bargaining power when next it returns to the negotiating table. Thus, it is reasonable to expect that a large carrier will wield its superior bargaining power to obtain better rates, even if those rates would be uneconomic for the CLEC.

Apart from the major IXCs, RBOCs will have the incentive and ability to instruct their long-distance affiliates either to make unreasonable demands or to refuse to purchase access services from a CLEC, thereby making that CLEC's local service less viable and competitive.[13] This would put CLECs in a particularly untenable position since they are also dependent on ILECs for access to essential network elements and interconnection in order to provide service.

Allegiance concurs with those commenters that contend that in light of CLECs' and IXCs' unequal bargaining power, prohibiting CLECs from filing tariffs and requiring carriers to

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[11] Sprint Comments at 3-4.

[12] *Id.* at 3.

[13] *Id.* at 4.

negotiate access rates, terms and conditions will inevitably require the regulatory intervention of the Commission in order to ensure just and reasonable contract provisions.[14] Thus, Sprint predicts that the Commission will have to ultimately decide the reasonable terms of interconnection between CLECs and IXC and to monitor and enforce the statutory prohibition against unjust discrimination if the Commission requires mandatory detariffing.[15] Consequently, requiring parties of unequal bargaining power to negotiate interstate access charges would not produce any administrative savings for the Commission.

Accordingly, forcing carriers to negotiate access rates, terms and conditions is not appropriate because CLECs and IXCs have unequal bargaining power.

III. SELECTIVELY DETARIFFING CLEC ACCESS CHARGES THAT EXCEED THOSE OF THE ILECS IS NOT AN ACCEPTABLE APPROACH

The Commission should reject AT&T's proposal to prohibit CLECs whose access rates exceed those of the ILECs from filing tariffs.[16] As discussed, AT&T opposes mandatory detariffing as a general matter because of harms to CLECs and because it is not necessary in order to protect the interests of IXCs.[17] These arguments completely undercut AT&T's

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[14] ALTS Comments at 14; Sprint Comments at 4.

[15] Sprint Comments at 4.

[16] AT&T Supplemental Comments at 2, 5-6, 9-10.

[17] *Supra* at 3-4.

inconsistent request that CLECs whose access charges are higher than the ILEC's be prohibited from filing tariffs and the Commission should reject it for this reason alone.

In addition, as discussed, IXCs, and especially AT&T as the largest IXC, would have superior bargaining power in negotiating with CLECs. In reality, AT&T's proposal for selective detariffing is a transparent, self-serving attempt to obtain official sanction to use its superior bargaining power to compel CLECs to comply with its demands for access rates, terms and conditions.

Moreover, AT&T provides no evidence that the ILEC rates are an appropriate benchmark by which to measure CLECs' access rates. The Commission, however, has recently determined that CLEC access charges are not unreasonable merely because they are higher than ILEC charges and that ILEC rates are not necessarily a proper benchmark for CLECs' rates.[18] In fact, the record in this proceeding demonstrates that while CLEC rate structures might differ from those of ILECs, CLEC per-minute access rates are not excessive or unreasonable when compared to ILEC combined access rates.[19] The Commission has correctly recognized that CLECs may be justified in setting higher access charges for legitimate business reasons.[20] For

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[18] *Sprint Communications Company v. MGC Communications, Inc.*, File No. EB-00-MD-002 (rel. June 9, 2000).

[19] *See* ALTS Comments in CC Docket No. 96-262, filed on Oct. 29, 1999 (adjusted to include other flat-rate charges and based on similarities to NECA carriers).

[20] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Report and Order, CC Docket Nos 96-262, 94-1, 91-213, and 95-72, 12 FCC Rcd 15982, ¶ 244 (1997)("[w]e acknowledge that CLEC access rates may, in fact, be higher due

instance, large ILECs serving broad geographic regions benefit from being able to geographically average their access charges across their service areas, and thus their rates reflect the costs of serving both urban and rural portions of their territories.[21] Larger carriers typically have lower switching costs than smaller carriers because of economies of scale. Accordingly, the Commission should reject AT&T's selective detariffing proposal because there is no reason to believe that ILEC rates define reasonable rates for CLECs. The Commission should also note that AT&T's allegation that a small but rapidly growing segment of the CLEC industry charge supracompetitive rates is completely unsupported.[22]

Additionally, pegging CLEC detariffing obligations on a comparison to ILEC rates would be administratively unworkable for both CLECs and IXCs because it could allow repeated detariffing or tariffing of CLEC interstate access charges based merely on the vagaries of ILEC tariff filings. Also, giving ILECs the ability to impose the substantial burdens on their competitors of negotiating access charges by lowering their own access charges, even by a fraction of a cent, would give ILECs a further competitive advantage. AT&T's plan would also be administratively unworkable because CLECs do not have the same rate structure as ILECs. It

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to the CLECs' high start-up costs for building new networks, their small geographic service areas, and the limited number of subscribers over which CLECs can distribute costs").

[21] Pursuant to section 254(g). 47 U.S.C. sec. 254(g)

[22] AT&T Supplemental Comments at 1.

would be virtually impossible without complicated rate comparison procedures to ascertain whether CLECs rates are genuinely higher than ILEC rates.

IV. ENFORCEMENT OF THE EXISTING RULES IS THE "LEAST INTRUSIVE" METHOD TO ADDRESS EXCESSIVE ACCESS CHARGES

In the *Further Notice of Proposed Rulemaking*, the Commission sought the "least intrusive means possible to correct any possible market failure" affecting CLEC access charges.[23] As shown in initial comments, Allegiance and other commenters dispute the contention that there is market failure and that CLECs generally charge excessive access rates.[24] However, to the extent that a given CLEC's rates are excessive, an IXC may obtain relief by filing a Section 207 complaint in federal court or a Section 208 complaint with the Commission for unjust or unreasonable rates and practices under Sections 201 or 202 of the Act.

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[23] *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking 14 FCC Rcd 14421, 14348, para. 256 (1999) ("*Further Notice of Proposed Rulemaking*").

[24] *See, e.g.*, ALTS Comments at 1-2; Joint Comments of CTSI et al. at 3-4; Joint Comments of Mpower et al. at 8; Time Warner Telecom Comments at 2-3.

V. CONCLUSION

For the reasons identified by Allegiance and other CLECs, the Commission should retain its permissive interstate access detariffing policy.

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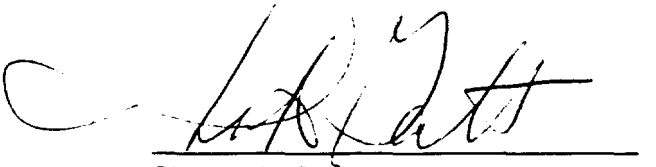
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July 2000, a copy of the Reply Comments of Allegiance Telecom, Inc. was served by hand or via first-class mail, postage prepaid, on the entities listed on the attached pages.



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